

Decentralizing *essential* questions and decisions about economic and national security issues such as full employment, health care, housing, public education, justice - and, yes, catastrophes like Hurricane Katrina and September 11 - is a guarantee of economic injustice for workers and consumers, inadequate health care, shelter and learning, as well as national and personal insecurity for all Americans.

As we have seen with these two recent catastrophes, the fifty states, acting individually or functioning merely in loose cooperation or voluntary association, simply cannot or will not adequately address, policy wise, administratively or financially, these basic national needs and challenges. Only if these essential questions are addressed in a democratic, national, centralized, and coordinated way can we even hope to build a better nation.

There is no simple answer to this balance of power issue. The question of the relationship of the states to the federal government is an ongoing one. Times and circumstances change, and if government is to be relevant, responsive, and accountable to the American people's real needs, the relationship, roles, and balance of power between the federal and state governments must adapt and adjust.

This balance of state and federal power is not something that can be settled "by the opinion of any one generation," wrote Woodrow Wilson in 1911. "Changes in the social and economic condition of society, in the electorate's perception of issues needing to be addressed by government, and in the prevailing political values," Wilson declared, "require each successive generation to treat federal-state relationships as 'a new question,' subject to full and searching reappraisal."

Politically, however, that reality or circumstance should not be used as an excuse to pursue an anti-federal-government philosophy of states' rights. The guiding or dominant principle must remain true to the Preamble to our Constitution - to build a more perfect **Union**.

The late Chief Justice William Rehnquist had a more rigid constitutional and legal point of view. "As a member of the Burger Court, Rehnquist played a crucial role in reviving the debate regarding the relationship between the federal government and the states. . . . The consequences of Rehnquist's state-centered federalism surfaced dramatically in the area of individual rights. Since the 1960s, the Court had held that nearly every provision in the Bill of

Rights applies to the states through the Due Process Clause of the Fourteenth Amendment. Rehnquist voiced his disagreement with such a method of determining the constitutional requirements of state action, particularly in the context of criminal proceedings, urging a return to an earlier approach whereby the states were not required to comply with the Bill of Rights but only to treat individuals with 'fundamental fairness.' (Hall, et al., *Oxford Companion to the Supreme Court*, p. 590)

It is in this context that we want to ask Judge John Roberts the following ten questions.

1. What is your view of dual federalism and/or state-centered federalism?
2. What is the ***proper role of the federal government in advance*** of a Hurricane Katrina or a September 11th terrorist attack - i.e.,
in preparation
for such a natural catastrophe or a terrorist attack? What is the
proper role of the federal government in response
to a Hurricane Katrina? Or to a terrorist attack such as occurred on September 11, 2001?
3. In your view, what are the constitutional boundaries within which Congress can address issues like Hurricane Katrina and 9/11? Who should have the authority, the President and Congress or the effected State Governors and the many local officials?
4. An ***equal educational opportunity*** is something virtually every American accepts and values. As you know Judge Roberts, the Rehnquist Court held that public education was within the purview and jurisdiction of the fifty states and local school boards. With regard to state-centered federalism, what is your view of the proper role of the
federal government
in regard to educating all of the nation's children in our public schools, both within and between states?
5. What are the constitutional boundaries within which Congress can address providing an

equal high-quality public education for all of our students in the 50 states, 3,067 counties and 15,000 school districts - including funding, physical facilities, and the manner of administration and instruction?

6. Access to affordable health care is a concern of virtually every American family. What are the constitutional boundaries within which Congress can address the health care needs of ***all*** of our citizens, including the nearly 100 million Americans who either have no health insurance (45.8 million) or a similar number with inadequate health insurance?

7. From the perspective of states' rights, what are the constitutional boundaries within which Congress can act to provide an ***equal high-quality health care system for all Americans***, including the young, the poor, the elderly and the infirm?

8. Work and the work ethic may be the highest value of the American people. But there are more able-bodied Americans willing to work at livable wages than there are jobs. From the perspective of state-centered federalism, what are the constitutional limits on Congress and the federal government in providing employment at livable wages for every American willing and able to work?

9. Affordable housing is an important value of the American people. Again, from the perspective of state-centered federalism, are there any constitutional limits to Congress passing legislation to provide every American family with decent, safe, sanitary and affordable housing?

10. Broadly speaking, how does someone who constitutionally supports states' rights view issues like voting, civil, reproductive and environmental rights?

The central question then is how do we as a nation go about fulfilling the Constitution's proclamation "to build a more perfect Union?" It can't be accomplished through fifty separate and unequal states. Nor through 3,067 separate and unequal counties; nor local control of thousands more separate and unequal cities. Building thousands of separate and unequal health care and educational systems won't work. Nor can a multilayered approach provide a

clean, safe, and sustainable environment, or solve the affordable housing crisis. And if we rely on a similar approach to creating a tax structure that meets our basic material needs, many will be left behind - especially when one revenue stream comes from an agricultural-based economy, another from an industrial-based economy, a third from a service-based economy, and a final one from an information-based economy.

Common sense tells us it is impossible to build a more perfect Union using the Tenth Amendment, states' rights, to equally provide for ***all*** Americans' basic material needs. Yet that is exactly the constitutional structure that is in place today.

Judge Roberts' legal philosophy represents a long line of states' rights activists whose state-centered federalism and conservative interpretation of the Constitution has left our nation separate and unequal constitutionally without the capacity to build a more perfect Union.

While everyone sees Hurricane Katrina and 911 as catastrophes, strict constuctionists don't see 100 million Americans with inadequate health insurance, an educational system that invests unequally and leaves many of our children behind, an affordable housing crisis for many poor and working class Americans, and persistent unemployment as man-made politically created disasters that can and should be addressed by the FEDERAL government.

Judge Roberts is an advocate for state-centered federalism and therefore should be DENIED the highest legal seat in the land!